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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

) Case No.  
**Jessy Zaklit and Alfred Zaklit,**  
**individually and on behalf of all) Class Action Complaint For**  
**others similarly situated, ) Violations Of:**  
)  
Plaintiffs, ) **1. The Fair Debt Collection**  
) **Practices Act, 15 U.S.C.**  
vs. ) **§§1692, et seq.; and**  
)  
**Phillips & Cohen Associates, LTD., ) 2. The Rosenthal Fair Debt**  
) **Collection Practices Act, Cal.**  
Defendant. ) **Civ. Code §§1788, et seq.**

) **Jury Trial Demanded**  
)  
)  
)

## **Introduction**

- 1  
2  
3 **1.** This case arises as a result of false, deceptive and unfair debt-collection  
4 practices promulgated nationwide by Defendant, PHILLIPS & COHEN  
5 ASSOCIATES, LTD. (“Defendant”), in an effort to deceive consumers and  
6 debtors into renewing expired statutes of limitations on Breach of Contract  
7 claims that Defendant failed to bring in a timely manner against consumers  
8 and debtors.  
9  
10
- 11 **2.** In particular, Plaintiffs, Jessy Zaklit and Alfred Zaklit (“Plaintiffs”), allege  
12 that within the year preceding the filing of this Complaint, Defendant  
13 attempted to collect debts from him and other consumers and debtors by  
14 systematically sending them mail based collection correspondence that failed  
15 to advise the consumers and debtors that the statutes of limitations for filing  
16 legal claims to collect on those debts (“time-barred debts”) had expired, and  
17 thus, that legal claims cannot be brought against them past of the statute of  
18 limitations and that making even the smallest of payments renews the expired  
19 statutes of limitations.  
20  
21
- 22 **3.** The FTC has found that nondisclosure of the fact that a debt is time-barred  
23 might deceive a consumer in at least the following ways: 1) since most  
24 consumers do not know or understand their legal rights regarding the  
25 collection of time-barred debts, efforts to collect on such debts may create a  
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misleading impression that the consumer has no defense to a lawsuit; and 2) consumers often do not know that in many states, making even the smallest of payments on a time-barred debt actually renews statute of limitations on that debt. Given the potential for confusion, and to avoid creating a misleading impression, the FTC recommended that if a collector knows or should know that it is collecting on a time-barred debt, it must inform the consumer that (1) the collector cannot sue to collect the debt, and (2) providing partial payment would revive the collector's ability to sue to collect the remaining balance. *Fed. Trade Comm'n, The Structure and Practice of the Debt Buying Industry*, 47(2013) (FTC Report 2013).

4. Reflective of the importance of advising consumers and debtors when their debt is past the statute of limitations is the consent decree between the FTC and Asset Acceptance, LLC requiring it to disclose to consumers *whether it knows or believes that a debt was incurred outside the limitations period*, the following: “The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it.” *United States v. Asset Acceptance, LLC*, No. 8:12-cv-182-T-27EAJ (M.D.Fla.2012).

5. Plaintiffs also allege that Defendant systematically sent mail based debt collection correspondence to consumers and debtors on time-barred debts

1 using the term “settlement,” to mislead debtors and consumers into believing  
2 that legal action against them was pending.  
3

4 **6.** Such conduct is inherently deceptive and misleads the least-sophisticated  
5 consumer, as it is it is plausible that an unsophisticated consumer would  
6 believe letter that offers to “settle” a debt implies that the debt is legally  
7 enforceable. *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010 (2014). After  
8 all, most consumers do not understand their rights with regards to time-barred  
9 debts. *Fed. Trade Comm’n, Repairing a Broken System: Protecting*  
10 *Consumers in Debt Collection Litigation and Arbitration* 26-27 (2010).  
11  
12

13  
14 **7.** Defendant’s acts and omissions were intentional, and resulted from  
15 Defendant’s desire to mislead debtors and consumers into making payments,  
16 which would renew expired statutes of limitations, thereby allowing  
17 Defendant to subsequently file legal claims against those same consumers and  
18 debtors who had available to them, the affirmative defense of “statute of  
19 limitations,” prior to making such falsely and unfairly induced payments.  
20  
21

22 **8.** Thus, Plaintiffs bring class action claims against Defendant, under the Federal  
23 Fair Debt Collection Practices Act (“FDCPA”) and the Rosenthal Fair Debt  
24 Collection Practices Act (“RFDCPA”), both of which were enacted to  
25 “eliminate abusive debt collection practices by debt collectors,” and to  
26 “prohibit debt collectors from engaging in unfair or deceptive acts or practices  
27  
28

1 in the collection of consumer debts.” 15 U.S.C. 1692(e); *Cal. Civ. Code*  
2 §1788.1(b).  
3

#### 4 **Jurisdiction and Venue**

5 **9.** The Court has jurisdiction over Plaintiffs’ FDCPA cause of action pursuant to  
6 28 U.S.C. §1331, and supplemental jurisdiction over Plaintiffs’ RFDCPA  
7 claim pursuant to 28 U.S.C. §1367.  
8

9 **10.** Venue is proper in the Central District of California pursuant to 18 U.S.C. §  
10 1391(b) because Defendant does business within the Central District of  
11 California, and because Plaintiffs are residents of Riverside County,  
12 California, which is within the Central District of California.  
13  
14

#### 15 **The Parties**

16 **11.** Plaintiffs are both a natural person residing in Riverside County, State of  
17 California who are obligated or allegedly obligated to pay a debt, and from  
18 whom a debt collector seeks to collect a consumer debt which is due and  
19 owing or alleged to be due and owing, thereby rendering them both a  
20 “consumer,” under the FDCPA, 15 U.S.C. §1692a(3), and a “debtor” under  
21 the RFDCPA, *Cal. Civ. Code* §§1788.2(h).  
22  
23  
24

25 **12.** Defendant is a company that uses any instrumentality of interstate commerce  
26 or the mails in its business, the principal purpose of which is the collection of  
27 any debts; it also regularly collects or attempts to collect, directly or indirectly,  
28

1 debts owed or due or asserted to be owed or due another. Thus, Defendant is a  
 2 “debt collector,” under the FDCPA, 15 U.S.C. §1692(a)6. Defendant, in the  
 3 ordinary course of business, regularly, on behalf of itself or others, engages in  
 4 debt collection, thereby qualifying it as a “debt collector,” under the RFDCPA,  
 5 *Cal. Civ. Code* §1788.2(c).

8 **13.** The debts Defendant attempted to collect from Plaintiffs and the putative class  
 9 members qualify as “debt(s),” under the FDCPA, 5 U.S.C. §1692a(5), and as  
 10 “consumer debt(s),” under the RFDCPA, *Cal. Civ. Code* §1788.2(f).

### 12 **Factual Allegations**

14 **14.** Within one (1) year preceding the filing of this class action lawsuit, Defendant  
 15 mailed Plaintiffs collection letters dated February 16, 2015 and April 14, 2015.

17 **15.** In the February 16, 2015 letter, Defendant introduced itself by stating:

18 **Our Client, your creditor, Barclays Bank Delaware**  
 19 **has listed your account with Phillips Cohen**  
 20 **Associates, Ltd. to recover the outstanding amount**  
 21 **owed to them on the above referenced account,**  
 22 **Barclays Bank Delaware.**

23 **We will work with you to attempt to resolve this**  
 24 **matter.**

25 **16.** Then, in the April 14, 2015 letter, Defendant stated in relevant part:

26 **We had hoped that you would resolve your financial**  
 27 **obligations with Barclays Bank Delaware prior to**  
 28 **initiating further collection activity to recover the**  
**amount owed to them. Apparently that is not the**  
**case.**

1           **In an effort to reach a mutually acceptable remedy**  
2           **to this matter, our client has agreed to offer you the**  
3           **opportunity to settle this indebtedness for 45% of**  
4           **the amount owed or \$ 626.72. If this matter remains**  
5           **unresolved, we will have no other alternative but to**  
6           **evaluate your credit history and present financial**  
7           **circumstances, then proceed accordingly.**

8           **You now have an extremely important decision to**  
9           **make...**

10           **Time is of the essence. We genuinely hope that you**  
11           **resolve this obligation without the need for further**  
12           **collection activity.**

13           **17.**No where does the above cited collection letters provide Plaintiffs any  
14           information regarding the statute of limitations, despite the fact that Plaintiffs'  
15           last payment on this balance was made more than four (4) years prior to  
16           February 16 and April 14 2015..

17           **18.**This letter also fails to advise Plaintiffs that: 1) Defendant cannot sue Plaintiffs  
18           to collect the debt; and 2) providing partial payment would revive the  
19           Defendant's ability to sue Plaintiffs to collect the remaining balance.  
20

21           **19.**Finally, the April 14, 2015 letter also repeatedly uses the term "settlement,"  
22           despite omitting the fact that the alleged debt is time-barred and that there is  
23           no pending legal action which warrants the use of the term "settlement."  
24

25           **20.**Ultimately, this letter mislead Plaintiffs into believing that Defendant was not  
26           past the statute of limitations for suing him on the debt; it also mislead  
27           Plaintiffs into believing that any statute of limitations on the debt would not be  
28

1 impacted if Plaintiffs were to make a payment. Finally, this letter mislead  
2 Plaintiffs through the use of the term “settlement,” by leading him to believe  
3 that there was a pending legal matter associated with the debt.  
4

5 **Class Allegations**  
6

7 **21.** Plaintiffs bring this class action on behalf of himself and all others similarly  
8 situated (“the Class”).  
9

10 **22.** Plaintiffs represents, and is a member of the following classes:  
11

- 12 a. All persons residing in the United States, who, within the one (1)  
13 year preceding the filing of this Complaint, received collection  
14 correspondence from Defendant that failed to disclose that their  
15 debts, which are time-barred, are past the statutes of limitations;  
16  
17 b. All persons residing in the United States, who, within the one (1)  
18 year preceding the filing of this Complaint, received collection  
19 correspondence from Defendant that failed to disclose that  
20 Defendant cannot sue to recover the time-barred debts;  
21  
22 c. All persons residing in the United States, who, within the one (1)  
23 year preceding the filing of this Complaint, received collection  
24 correspondence from Defendant that failed to disclose that making  
25 payments on their time-barred debts would renew the statutes of  
26 limitations on said debts;  
27  
28



d. All persons residing in the United States, who, within the one (1) year preceding the filing of this Complaint, received collection correspondence from Defendant that used the term “settlement,” in connection with attempting to collect on their time-barred debts.

**23.**As a result of Defendant’s conduct, Plaintiffs and members of the putative class have been deprived of accurate and valid information regarding the legal status of time-barred debts that Defendant sought to collect from them. Defendant mislead Plaintiffs and the Class into believing that making payments on time-barred debts is legally inconsequential. They have also been mislead, through the use of the term “settlement,” into believing that there were pending legal actions against them, despite the fact that these debts were time-barred from legal action.

**24.**Defendant and its employees or agents are excluded from the Class. Plaintiffs do not know the number of members in the Class, but believes the Class members number to be in the tens of thousands, if not more. Thus, this matter should be certified as a Class action to assist in the expeditious litigation of this matter.

**25.** This lawsuit seeks statutory damages, actual damages, and injunctive relief for recovery of economic injury on behalf of the Class and is not intended to request any recovery for personal injury and claims related thereto. Plaintiffs

1 reserve the right to expand the Class definition to seek recovery on behalf of  
2 additional persons as warranted as facts are learned in further investigation and  
3 discovery.  
4

5 **26.** The joinder of the Class members is impractical and the disposition of their  
6 claims in the Class action will provide substantial benefits both to the parties  
7 and to the court. The Class can be identified through Defendant's records or  
8 Defendant's agents' records.  
9  
10

11 **27.** There is a well-defined community of interest in the questions of law and fact  
12 involved affecting the parties to be represented. The questions of law and fact  
13 to the Class predominate over questions which may affect individual Class  
14 members, including the following:  
15

16 a. Whether, within the one (1) year preceding the filing of this  
17 Complaint, Defendant sent collection letters to debtors and  
18 consumers on time-barred debts that:  
19  
20

21 i. Failed to disclose the particular statute of limitations for the  
22 debt, and that the debt was time-barred;  
23

24 ii. Failed to disclose that Defendant cannot bring legal action  
25 against the debtor or consumer because the debt is time-  
26 barred;  
27  
28

1           iii. Failed to disclose that the consumer or debtor making payment  
2           to Defendant renews the statute of limitations on the time-  
3           barred debt;

4           iv. Failed to disclose that despite the use of the term “settlement,”  
5           no legal action was pending against the particular consumer or  
6           debtor.

7           b. Whether Plaintiffs and the Class members were damaged thereby,  
8           and the extent of damages for such violation; and

9           c. Whether Defendant should be enjoined from engaging in such  
10          conduct in the future.

11 **28.**As a person that received the grossly inadequate and misleading collection  
12 letter from Defendant, Plaintiffs are asserting claims that are typical of the  
13 Class. Plaintiffs will fairly and adequately represent and protect the interests  
14 of the Class in that Plaintiffs have no interests antagonistic to any member of  
15 the Class.

16 **29.**Plaintiffs and the members of the Class have all suffered irreparable harm as a  
17 result of the Defendant’s unlawful and wrongful conduct. Absent a class  
18 action, the Class will continue to face the potential for irreparable harm. In  
19 addition, these violations of law will be allowed to proceed without remedy  
20 and Defendant will likely continue such illegal conduct, resulting in numerous  
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1 debtors and consumers unknowingly making themselves susceptible to legal  
2 action on previously time-barred debts.  
3

4 **30.**Because of the size of the individual Class member's claims, few, if any, Class  
5 members could afford to seek legal redress for the wrongs complained of  
6 herein.  
7

8 **31.**Plaintiffs have retained counsel experienced in handling class action claims  
9 and claims involving violations of the FDCPA and RFDCPA.  
10

11 **32.**A class action is a superior method for the fair and efficient adjudication of  
12 this controversy. Class-wide damages are essential to induce Defendant to  
13 comply with federal and California law. The interest of Class members in  
14 individually controlling the prosecution of separate claims against Defendant  
15 is small because the maximum statutory damages in an individual action under  
16 the FDCPA and/or RFDCPA are minimal. Management of these claims is  
17 likely to present significantly fewer difficulties than those presented in many  
18 class claims.  
19  
20  
21

22 **33.**Defendant has acted on grounds generally applicable to the Class, thereby  
23 making appropriate final injunctive relief and corresponding declaratory relief  
24 with respect to the Class as a whole.  
25

26 ///

27 ///

**First Cause of Action: Violation of the Fair Debt Collection Practices Act**

**34.** Plaintiffs incorporate by reference, the preceding paragraphs of this Complaint.

**35.** A debt collector may not falsely represent the character, amount or legal status of any debt in connection with the collection of any debt. *15 U.S.C.* §1692e(2)(A). By engaging in the above detailed conduct, Defendant violated this provision of the FDCPA.

**36.** A debt collector may not falsely represent or imply that nonpayment of Plaintiff's debt would result in the seizure, garnishment, attachment, or sale of Plaintiff's property or wages, where such action is not lawful or Defendant did not intend to take such action *15 U.S.C.* §1692e(4). By engaging in the above detailed conduct, Defendant violated this provision of the FDCPA.

**37.** A debt collector may not threaten to take any action that cannot legally be taken or that is not intended to be taken, in connection with the collection of any debt. *15 U.S.C.* §1692e(5). By engaging in the above detailed conduct, Defendant violated this provision of the FDCPA.

**38.** A debt collector may not use false representations or deceptive means, in connection with the collection of any debt. *15 U.S.C.* §1692e(10). By engaging in the above detailed conduct, Defendant violated this provision of the FDCPA.

1 **39.**A debt collector may not use unfair or unconscionable means, in connection  
2 with the collection of any debt. 15 U.S.C. §1692f. By engaging in the above  
3 detailed conduct, Defendant violated this provision of the FDCPA.

4  
5 **40.**As a direct proximate result of Defendant's conduct, Plaintiffs and the Class  
6 have suffered actual damages and other harm, thereby entitling them to seek  
7 statutory damages in the amount of \$1,000.00 each, in addition to reasonably  
8 incurred attorney's fees and costs. 15 U.S.C. §1692k(a)(1)-(3)  
9  
10

11 **Prayer for Damages**

12 Wherefore, Plaintiffs respectfully requests the Court grant Plaintiffs and the  
13 Class members the following relief against Defendant:  
14

- 15 a. That this action be certified as a class action on behalf of The Class  
16 and Plaintiffs be appointed as the representative of The Class;  
17  
18 b. For statutory damages of \$1,000.00 for Plaintiff and each member of  
19 The Class pursuant to 15 U.S.C. §1692k(a)(1)  
20  
21 c. For actual damages according to proof;  
22  
23 d. For reasonable attorneys' fees and costs of suit;  
24  
25 e. For prejudgment interest at the legal rate; and  
26  
27 f. For such further relief as this Court deems necessary, just, and  
28 proper.

///  
28

**Second Cause of Action: Violation of the  
Rosenthal Fair Debt Collection Practices Act**

41. Plaintiffs incorporate by reference, the preceding paragraphs of this Complaint.

42. Pursuant to §1788.17 of the RFDCPA: “[n]otwithstanding any other provision of this title, every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code. However, subsection (11) of Section 1692e and Section 1692g shall not apply to any person specified in paragraphs (A) and (B) of subsection (6) of Section 1692a of Title 15 of the United States Code or that person's principal. The references to federal codes in this section refer to those codes as they read January 1, 2001.” *Cal. Civ. Code* §1788.17

43. Thus by engaging in conduct prohibited by Sections e(2)(A), e(4), e(5), e(10) and e(f) of the FDCPA, Defendant violated the RFDCPA.

44. As a direct proximate result of Defendant's conduct, Plaintiffs and the Class have suffered actual damages and other harm, thereby entitling them to seek statutory damages in the amount of \$1,000.00 each, actual damages and reasonably incurred attorney's fees and costs. *Cal. Civ. Code* §1788.30.

**Prayer for Damages**

Wherefore, Plaintiffs respectfully request the Court grant Plaintiffs and the

1 Class members the following relief against Defendant:

- 2 a. That this action be certified as a class action on behalf of The Class  
3 and Plaintiffs be appointed as the representative of The Class;  
4  
5 b. For statutory damages of \$1,000.00 for Plaintiff and each member of  
6 The Class pursuant to *Cal. Civ. Code* §1788.30.  
7  
8 c. .For actual damages according to proof;  
9  
10 d. For reasonable attorneys' fees and costs of suit;  
11  
12 e. For prejudgment interest at the legal rate; and  
13  
14 f. For such further relief as this Court deems necessary, just, and  
proper.

15 **Trial by Jury**

16 Pursuant to the seventh amendment to the Constitution of the United States  
17 of America, Plaintiffs are entitled to, hereby does demand a jury trial.  
18

19 Dated: July 17, 2015  
20

21 By: /s/Todd M. Friedman  
22 Todd M. Friedman, Esq.  
23 **LAW OFFICES OF TODD M. FRIEDMAN, P.C.**  
24 Attorneys for Plaintiff  
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